

## Draft EIS - Appendix A

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# **APPENDIX A**

## **HIGHLIGHTED STRIKE-AND-REPLACE**

### **VERSION OF REGULATIONS**

This appendix is intended as an aid to understanding the BLM Proposed Grazing Rule published in the Federal Register on December 8, 2003 (RIN: 1004-AD42, 68 FR 68452). This appendix is not an official publication of the Bureau of Land Management. The BLM believes it to be accurate; however, if there are differences between the changes shown on this document and the regulatory text published in the Federal Register (see 68 FR 68468), the Federal Register should be considered the correct version.

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**DOCUMENT IDENTIFICATION: This is a draft version of 43 CFR Part 4100 that shows, in strike-replace format, proposed changes to BLM grazing rules that were published in the Federal Register on December, 8, 2003. (68 FR 68452 - RIN: 1004-AD42). This document may not be relied upon for legal purposes.**

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43 CFR Public Lands: Interior  
Subtitle B - [ Regulations Relating to Public Lands  
(Continued) ]

CHAPTER II, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE  
INTERIOR

SUBCHAPTER D -- RANGE MANAGEMENT (4000)

PART 4100 -- GRAZING ADMINISTRATION -- EXCLUSIVE OF ALASKA

Subpart 4100 -- Grazing Administration -- Exclusive of  
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- 4180.1 Fundamentals of rangeland health.
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Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

Source: 43 FR 29067, July 5, 1978, unless otherwise noted.

Subpart 4100 -- Grazing Administration --  
Exclusive of Alaska; General

§4100.0-1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

§4100.0-2 Objectives.

(a) The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

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(b) These objectives will ~~shall~~ be realized in a manner ~~that is~~ consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in ~~43 CFR part 1720, subpart 1725;~~ the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701~~40~~) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)2).

§4100.0-3 Authority.

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 118~~1~~d);

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

The Act means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r).



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Active use ~~means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.~~ means that portion of the grazing preference that is:

- (1) Available for livestock grazing use under a permit or lease based on rangeland carrying capacity and resource conditions in an allotment; and
- (2) Not in suspension.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

Actual use report means a report of the actual livestock grazing use submitted by the permittee or lessee.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term "control" means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

Allotment means an area of land designated and managed for grazing of livestock.

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

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Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

Authorized officer means any person authorized by the Secretary to administer regulations in this part.

Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

Cancelled or cancellation means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

Class of livestock means ages and/or sex groups of a kind of livestock.

~~Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of -- (1) Protecting the land and its resources from destruction or unnecessary injury; (2) Improving rangeland conditions; or (3) Enhancing resource values, uses, or functions.~~

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

Control means being responsible for and providing care and management of base property and/or livestock.

District means the specific area of public lands administered by a District Manager.

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Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

Grazing district means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

Grazing fee year means the year, used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year.

Grazing lease means a document that authorizes grazing use of the public lands under section 15 of the Act. ~~outside an established grazing district. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease. all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.~~

Grazing permit means a document that authorizes grazing use of the public lands under section 3 of the Act. ~~within an established grazing district. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit. all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.~~

Grazing preference or preference means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease. ~~This priority is attached to base property owned or controlled by the permittee or lessee.~~

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Interested public means an individual, group or organization that has:

(1)(i) ~~Submitted~~ a written request to ~~BLM the~~ authorized officer to be provided an opportunity to be involved in the ~~decisionmaking~~ process leading to a BLM decision for the management of livestock grazing public lands, and

(ii) Followed up ~~on~~ that request by commenting on or otherwise participating in the decisionmaking process as to the management of a specific allotment if there has been an opportunity for such participation; or,  
~~on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.~~

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et seq.) and establish management direction for resource uses of public lands.

Livestock or kind of livestock means species of domestic livestock -- cattle, sheep, horses, burros, and goats.

Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

Monitoring means the periodic observation and orderly collection of data to evaluate: (1) Effects of management actions; and (2) Effectiveness of actions in meeting management objectives.

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Preference means grazing preference (see definition of "grazing preference").

~~Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.~~

Public lands means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

Rangeland studies means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

Secretary means the Secretary of the Interior or his authorized officer.

Service area means the area that can be properly grazed by livestock watering at a certain water.

State Director means the State Director, Bureau of Land Management, or his or her authorized representative.

Supplemental feed means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.

Suspension means the ~~temporary~~ withholding from active use, through a decision issued by the authorized officer or by

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agreement, of part or all of the ~~permitted use grazing~~  
preference specified in a grazing permit or lease.

Temporary nonuse means that portion of active use that the  
authorized officer authorizes not to be ~~not used~~the  
authorized withholding, ~~on an annual basis, of all or a~~  
portion of permitted livestock use in response to an  
application made by ~~request of~~ the permittee or lessee.

Trend means the direction of change over time, either toward or away from desired management objectives.

Unauthorized leasing and subleasing means --

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

§4100.0-7 Cross reference.

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The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

#### §4100.0-8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

#### §4100.0-9 Information collection.

~~(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004-0005, 1004-0019, 1004-0020, 1004-0041, 1004-0047, 1004-0051, and 1004-0068. The information would be collected to permit enable the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes. should be approved. Response is required to obtain a benefit.~~

~~(b) Public reporting burden for the information collections are as follows: Clearance number 1004-0005 is estimated to average 0.33 hours per response, clearance number 1004-0019 is estimated to average 0.33 hours per response, clearance number 1004-0020 is estimated to average 0.33 hours per response, clearance number 1004-0041 is estimated to average 0.25 hours per response, clearance number 1004-0047 is estimated to average 0.25 hours per response, clearance number 1004-0051 is estimated to average 0.3 hours per~~



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~~response, and clearance number 1004-0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0005, -0019, -0020, -0041, -0047, -0051, or -0068, Washington, DC 20503.~~

## Subpart 4110 -- Qualifications and Preference

### §4110.1 Mandatory qualifications.

(a) Except as provided under §§4110.1-1, 4130.5, and 4130.6-3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

(1) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(2) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(3) A corporation authorized to conduct business in the State in which the grazing use is sought.

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under §4130.1-1(b).

~~(1) Renewal of permit or lease. (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of~~



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~~performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.~~

~~(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.~~

~~(2) New permit or lease. Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when —~~

~~(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or~~

~~(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or~~

~~(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.~~

~~(d)~~c) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

#### §4110.1-1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land

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Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of §4110.1.

## §4110.2 Grazing preference.

### §4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see §4100.0-5) if:

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple use management objective of the public lands.

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section.

(d) A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range

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improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(de) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2-3, to the new owner or person in control of that base property.

(f) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

§4110.2-2 Specifying ~~permitted use~~ grazing preference.

(a) ~~Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. All grazing permits and leases will specify~~ Grazing preference, shall will be specified in all grazing permits or and grazing leases except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted use Preference shall includes active use and encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is

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~~authorized based upon forage availability, or designated annual rangelands, Permitted livestock~~Active use ~~shall be~~ is based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under §4110.3-3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The ~~permitted use grazing preference~~ specified ~~shall be~~ is attached ed to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of ~~permitted use grazing preference~~ are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

#### §4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all qualifications and requirements of §§4110.1, 4110.2-1, and 4110.2-2.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under §4120.3 and maintained in conjunction with the transferred preference (see §4120.3-5). The terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see §4130.2) with such modifications as he may request which

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are approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with ~~the authorized officer~~ BLM a properly executed transfer application showing the base property and the grazing preference ~~amount of permitted use~~ being transferred in animal unit months.

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions

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of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

(g) Failure of either the transferee or the transferor to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

#### §4110.2-4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, ~~and the~~ State having lands or responsibility for managing resources within the area, ~~and the interested public,~~ the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

#### §4110.3 Changes in ~~permitted use~~ grazing preference status.

(a) The authorized officer ~~shall~~ will periodically review the ~~permitted use~~ grazing preference specified in a grazing permit or lease and ~~shall~~ make changes in the grazing preference status ~~permitted use~~ as needed to:

(1) ~~manage~~ manage, maintain or improve rangeland productivity;

~~to~~

(2) ~~assist~~ assist in restoring ecosystems to properly functioning conditions;

~~to~~ (3) ~~conform~~ conform with land use plans or activity plans; ~~or~~

~~to~~

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(4) eComply with the provisions of subpart 4180. ~~of this part.~~

(b) The authorized officer will support Tthese changes by monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer.

(c) Before changing grazing preference status, the authorized officer will document compliance with NEPA. Before changing grazing preference, the authorized officer will undertake the appropriate analysis review the grazing preference as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The authorized officer will analyze and, if appropriate, documentation will the include consideration of any impacts of the proposed change on relevant social, economic, and cultural effects of the proposed action.factors.

§4110.3-1 Increasing ~~permitted~~ active use.

BLM~~Additional forage~~ may ~~be~~ apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) Additional forage temporarily available. When the authorized officer determines that additional livestock forage is temporarily available, he may authorize its use on a for livestock grazing use may be apportioned on a nonrenewable basis in the following ordermanner:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to the amount of their active use; and

(2) To other qualified applicants under § 4130.1-2.

(b) Additional forage available on a sustained yield basis. When the authorized officer determines that additional for livestock forage is available on a sustained yield basis, he will apportion it in the following manner: grazing use shall first be apportioned in satisfaction of suspended



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~~permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available~~

(1) First, to remove all or a part of the suspension of preference of permittees or lessees with permits or leases in the allotment where the forage is available; and

(e2) Second, if additional forage remains after ending all suspensions, the authorized officer will After consultation, cooperation, and coordination with the affected permittees or lessees, and the State having lands or responsibility for managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be and apportioned it in the following priority order:

(1i) Permittees or lessees in proportion to their contribution or to stewardship efforts which result in increased forage production;

(2ii) Permittee(s) or lessee(s) in proportion to the amount of their permitted use grazing preference; and

(3iii) Other qualified applicants under §4130.1-2 of this title.

§4110.3-2 Decreasing ~~permitted~~active use.

(a) ~~Permitted~~The authorized officer may suspend Aactive use ~~may be suspended~~ in whole or in part on a temporary basis due (1) To drought, fire, or other natural causes reasons specified in § 4110.3-3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as



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determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer ~~shall will~~ reduce ~~permitted grazing active~~ use, ~~or~~ otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

§4110.3-3 Implementing ~~reductions changes~~ in ~~permitted active~~ use.

(a) (1) After consultation, cooperation, and coordination with the affected permittee or lessee, ~~and the State having lands or managing resources within the area, and the interested public, reductions of permitted~~ the authorized officer will implement changes in active use ~~shall will be implemented~~ through a documented agreement or by decision. ~~of the authorized officer. The authorized officer will implement c~~changes in active use in excess of 10 percent shall be implemented over a 5-year period unless:

(i) ~~A~~after consultation with the affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years; ~~or~~

or  
(ii) ~~Unless~~The changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing §4110.3-2 ~~will shall~~ be issued as proposed decisions pursuant to §4160.1, except as provided in paragraph (b) of this section.

~~(b) (b)-(1) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, A~~after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsibility ~~le~~ for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of

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paragraph (a) of this section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation; or

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) —Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay ~~is granted by the Office of Hearings and Appeals~~ in accordance with § 43 CFR 4.21 of this title.

§4110.4 Changes in public land acreage.

§4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under §4130.1-2 of this title.

§4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

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(2) ~~Permitted use~~ Grazing preference may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see §4120.3-6).

#### §4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

### Subpart 4120 -- Grazing Management

#### §4120.1 [Reserved]

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§4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall --

(1) Include terms and conditions under §§4130.3, 4130.3-1, 4130.3-2 4130.3-3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

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(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis shall be issued in accordance with ~~considered the proposed decision for the purposes of subpart § 4160.1. of this part.~~

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

#### §4120.3 Range improvements.

##### §4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

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(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3-2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). ~~Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.).~~ The decision document following the environmental analysis shall be issued in accordance with ~~considered the proposed decision under subpart § 4160.1. of this part.~~

#### §4120.3-2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, cooperators and the United States share title to permanent structural range improvements such as fences, wells, and pipelines where authorization is granted after [Insert date 60 days after publication in the FEDERAL REGISTER] ~~August 21, 1995 shall be in the name of the United States in proportion to their~~

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contribution to on-the-ground project development and construction costs. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. The authorized officer ~~BLM will document~~ Aa permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3-5 and 4120.3-6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

#### §4120.3-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse ~~or conservation use~~ has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of

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forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination regarding the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized range improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

#### §4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

#### §4120.3-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under §4110.2-3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.



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§4120.3-6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under §4120.3-4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

§4120.3-7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

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§4120.3-8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which the Bureau of Land Management is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

§4120.3-9 Water rights for the purpose of livestock grazing on public lands.

Any right ~~acquired by the United States acquires on or after August 21, 1995~~ to use water on public land for the purpose of livestock watering on public land ~~will~~ shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the ~~S~~state within which such land is located. ~~To the extent allowed by the law of~~

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~~the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.~~

#### §4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the FEDERAL REGISTER as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

#### §4120.5 Cooperation.

##### §4120.5-1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

##### §4120.5-2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The

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authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including --

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); ~~and~~

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management; ~~and~~

(c) State, local, or county--established grazing boards in reviewing range improvements and allotment management plans on public lands.

## Subpart 4130 -- Authorizing Grazing Use

### §4130.1 Applications.

#### §4130.1-1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. The authorized officer will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance.

(1)

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~~(1)~~ Renewal of permit or lease.

(i) The authorized officer will deem ~~T~~the applicant for renewal of a grazing permit or lease, and any affiliate, ~~shall be deemed~~ to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) New permit or lease. The authorized officer will deem applicants for new permits or leases, and any affiliates, to have a record of satisfactory performance when --

(i) The applicant or affiliate has not had any Federal grazing permit or lease cancelled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any ~~s~~State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) ~~The applicant or affiliate is not barred from holding a Federal grazing permit or lease by order of a~~ court of competent jurisdiction does not bar the applicant or affiliate from holding a Federal grazing permit or lease.

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(c) In determining whether affiliation exists, the authorized officer will~~shall~~ consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

#### §4130.1-2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of §4110.3-1 of this title or on the basis of any of the following factors:

- (a) Historical use of the public lands (see §4130.2(e));
- (b) Proper use of rangeland resources;
- (c) General needs of the applicant's livestock operations;
- (d) Public ingress or egress across privately owned or controlled land to public lands;
- (e) Topography;
- (f) Other land use requirements unique to the situation.
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and
- (h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

#### §4130.2 Grazing permits ~~or~~ and leases.

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(a) Grazing permits or leases ~~shall be issued to qualified applicants to~~ authorize use on the public lands and other ~~BLM-administered lands under the administration of the Bureau of Land Management~~ that are designated in land use plans as available for livestock grazing ~~through land use plans~~. Permits ~~or~~ and leases ~~shall~~will specify the grazing preference, including ~~livestock grazing, active and~~ suspended use ~~, and conservation use~~. These grazing permits and leases ~~shall~~will also specify terms and conditions pursuant to §§4130.3, 4130.3-1, and 4130.3-2.

(b) The authorized officer ~~shall~~will consult, cooperate, and coordinate with affected permittees or lessees, and the ~~State~~ having lands or responsibility ~~for managing resources within the area, and the interested public prior to the before~~ issuing ~~and~~ or renewing al of grazing permits and leases.

(c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless --

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

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(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease; and

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

~~(f) A permit or lease is not valid unless both the BLM and the permittee or and lessee and BLM have signed it. The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.~~

~~(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, allotment management plan or other activity plans and the provisions of subpart 4180 of this part.~~

~~(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed use will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or~~

~~(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.~~

~~(h) Application for nonrenewable grazing permits and leases under §§4110.3-1 and 4130.6-2 for areas for which conservation use has been authorized will not be approved.~~



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~~Forage made available as a result of temporary nonuse may be made available to qualified applicants under §4130.6-2.~~

(~~g~~) Permits or leases may incorporate the percentage of public land livestock use (see §4130.3-2(g)) or may include private land offered under exchange-of-use grazing agreements (see §4130.6-1).

(~~h~~) Provisions explaining how grazing permits or authorizations may be granted for grazing use on state, county or private land leased by the Bureau of Land Management under "The Pierce Act" and located within grazing districts are explained in 43 CFR part 4600.

#### §4130.3 Terms and conditions.

(a) Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160 unless:

(1) The terms and conditions of the permit or lease, such as terms and conditions mandated by a biological opinion prepared under the Endangered Species Act, are not subject to review by the Office of Hearings and Appeals; or

(2) The offer of permit or lease responds to an application for a permit or lease for grazing use on additional land acreage (see § 4110.4-1).

(c) If any of the terms and conditions of a BLM-offered permit or lease are stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4.

#### §4130.3-1 Mandatory terms and conditions.

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s)

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to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

#### §4130.3-2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;

(d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of

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plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee; ~~and.~~

~~(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.~~

§4130.3-3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees, and the ~~State~~ having lands or responsibility for managing resources within the area, ~~and the interested public,~~ the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not are not meeting management objectives specified in:

(i) The land use plan;

(ii) The pertinent allotment management plan or other activity plan; or, ~~or management objectives~~

(iii) An applicable decision issued under § 4160.3; ~~or~~

(2) isDo not in-conformance withto the provisions of subpart 4180. ~~of this part.~~

(b) To the extent practical, during the preparation of biological assessments or biological evaluations prepared

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under the Endangered Species Act, and other reports that evaluate monitoring and other data, that the authorized officer uses as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease, the authorized officer will~~shall~~ provide review opportunity and opportunity to provide input to:

(1) affected permittees or lessees;

(2) States having lands or responsibility for managing resources within the affected area; and,

(3) The interested public. ~~an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.~~

§4130.4 ~~Approval~~ Authorization of temporary changes in grazing use within the terms and conditions of permits and leases.

(a) (1) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease to:

(i) Respond to annual fluctuations in timing and amount of forage production; or

(ii) Meet locally established range readiness criteria.

(2) The authorized officer will consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

(b) For the purposes of this subpart, "within the terms and conditions of the permit or lease" means temporary changes to livestock number, period of use, or both, that would result in grazing use that:

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(1) Results in forage removal that does not exceed the amount of active use specified in the permit or lease; and

(2) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease.

~~(c) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer.~~ Permittees and lessees must apply if they wish --

(1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (d) of this section;

(2) To activate forage in temporary nonuse; or,  
~~or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the~~

(3) To use of forage that is temporarily available on designated ephemeral or annual ranges.

(d) (1) Temporary nonuse is authorized:

(i) Only if the authorized officer approves it in advance; and

(ii) For no longer than one year at a time.

(2) Permittees or lessees applying for temporary nonuse must state on their application the reasons supporting nonuse. The authorized officer will authorize nonuse to provide for:

(i) Natural resource conservation, enhancement or protection, including more rapid progress toward resource condition objectives or attainment of rangeland health standards; or

(ii) The business or personal needs of the permittee or lessee.

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(e) Under §4130.6-2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described at paragraph (d)(2)(ii) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (d)(2)(i) of this section.

(af) ~~Applications~~ Permittees or lessees who wish to apply for temporary changes in grazing use within the terms and conditions of their permit or lease should be filed an application with the authorized officer BLM. before the billing notices for the affected grazing use have been issuedThe authorized officer will assess a service charge under § 4130.8-3 to process Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which that require the issuance of a replacement or supplemental billing notice. shall be subject to a service charge under §4130.8 3 of this title.

#### §4130.5 Free-use grazing permits.

(a) A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to §4130.1-2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

(b) The authorized officer may also authorize free use under the following circumstances:

(1) The primary objective of ~~authorized~~ grazing use ~~or conservation use~~ is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

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(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

#### §4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

##### §4130.6-1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under §4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock carrying capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

##### §4130.6-2 Nonrenewable grazing permits and leases.

Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with

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existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, ~~and the State~~ having lands or responsibility for managing resources within the area, ~~and the interested public~~ prior to the issuance of nonrenewable grazing permits and leases.

#### §4130.6-3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

#### §4130.6-4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

#### §4130.7 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, health and sanitation.

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized



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livestock in order to promote the orderly administration of the public lands.

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed

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authorized livestock use and is consistent with other terms and conditions of the permit or lease.

#### §4130.8 Fees.

##### §4130.8-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

|     \$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

|     FVI = Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by \$3.65 and multiplied by 100;

|     BCPI = Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October

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(computed by the National Agricultural Statistics Service divided by \$22.04 per hundred weight and multiplied by 100; and

PPI = Prices Paid Index means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than \$1.35 per animal unit month.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) Except as provided in §4130.5, the full fee shall be charged for each animal unit month of ~~authorized~~ grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats:

(1) ~~Over~~ the age of 6 months at the time of entering the public lands or other lands administered by the Bureau of Land Management; ~~by~~

(2) ~~any such w~~weaned animals regardless of age; ~~or, by~~

(3) ~~such animals that will b~~becoming 12 months of age during the authorized period of use.

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~~(d) No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management. BLM will not charge grazing fees for animals that are less than 6 months of age at the time of entering BLM-administered lands, provided that they are the natural progeny of animals upon which fees are paid, provided and they will not become 12 months of age during the authorized period of use, nor for progeny born during that period.~~

(e) In calculating the billing, the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

~~(f)~~ A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in §4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service.

(eg) Fees are due on due date specified on the grazing fee bill. Payment will be made prior to grazing use. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. If allotment management plans provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

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(~~fh~~) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days may be a violation of §4140.1(b)(1) and ~~wis~~shall result in action by the authorized officer under ~~§4150.1~~ and subpart 4160-1-2.

#### §4130.8-2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

#### §4130.8-3 Service charge.

~~A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to (a) Under s~~Section  
304(a) of the Federal Land Policy and Management Act of 1976 ~~(43 U.S.C. 1734(a)), calculation of the Bureau service charge BLM assesses d shall will~~ reflect processing costs. and shall be BLM will adjusted the charge periodically as costs change, and will inform the public of the. ~~Notice of changes shall be by publishing ed a notice periodically~~ in the FEDERAL REGISTER.

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(b) Except when BLM initiates the action, the authorized officer BLM will assess a service charge for each of the following actions as shown on the table below--

Action	Service Charge
Issue crossing permit	\$75
Transfer grazing preference	\$145
Cancel and/or replace a grazing fee billing	\$50

§4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, Provided, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

#### Subpart 4140 -- Prohibited Acts

§4140.1 Acts prohibited on public lands.

~~The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:~~

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:

(1) Violating special terms and conditions incorporated in permits or leases;

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years. 7 ~~but~~ This does not

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include ~~ing~~ approved temporary nonuse, ~~conservation use~~, or use temporarily suspended by the authorized officer;

(3) Placing supplemental feed on these lands without authorization, ~~or contrary to the terms and conditions of the permit or lease~~;

(4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;

(5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer;

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts on BLM-administered lands ~~related to rangelands shall be~~ are subject to civil and criminal penalties set forth at §§4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:

(i) Without a permit or lease or other grazing use authorization (see § 4130.6) and timely payment of grazing fees; ~~and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.~~

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under §4130.7(c) of this title.

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(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

(6) Littering;

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) (1) A grazing permittee or lessee performing any Performance of ~~an~~the prohibited acts listed in paragraphs ~~(e)(1),~~(c)(2) or (c)(3) of this section on an allotment where he is authorized to graze under a BLM permit or lease



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may be subject to the civil penalties set forth at §4170.1-1, if:

~~where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and~~

(i) The permittee or lessee performs the prohibited act while engaged in activities related to grazing use authorized by his permit or lease;

(ii) ~~the~~ The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations~~;~~ and

(iii) ~~no~~ No further appeals are outstanding.~~7~~  
~~constitutes a prohibited act that may be subject to the civil penalties set forth at §4170.1-1.~~

(24) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources.

(32) (i) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 et seq.), Endangered Species Act (16 U.S.C. 1531 et seq.), or any provision of part 4700 of this

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chapter concerning the protection and management of wild free-roaming horses and burros; or

(~~ii~~iii) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

#### Subpart 4150 -- Unauthorized Grazing Use

##### §4150.1 Violations.

Violation of §4140.1(b)(1) constitutes unauthorized grazing use.

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

(b) Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts.

##### §4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under §4150.3.

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(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

(c) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under §4150.4.

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

#### §4150.3 Settlement.

Where violations are repeated willful, the authorized officer shall take action under §4170.1-1(b) of this title. The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

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(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) The public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

(b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.

(d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under subpart §4160-1 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.

(f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part pending resolution of any appeal.

#### §4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under §4150.2 may be impounded and disposed of by the authorized officer as provided herein.

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#### §4150.4-1 Notice of intent to impound.

(a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.

(b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

#### §4150.4-2 Impoundment.

After 5 days from delivery of the notice under §4150.4-1(a) of this title or any time after 5 days from publishing and posting the notice under §4150.4-1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12- month period following the effective date of the notice.

#### §4150.4-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

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#### §4150.4-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under §4150.3 or adequate showing that there has been no violation.

#### §4150.4-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law.

### Subpart 4160 -- Administrative Remedies

#### §4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state

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the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d).

(d) A biological assessment or biological evaluation prepared for purposes of Endangered Species Act consultation or conference is not a ~~proposed~~ decision for purposes of protest or appeal.

#### §4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

#### §4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

~~(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this~~

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~~section. See §§4.21 and 4.470 of this title for general provisions of the appeal and stay processes. (d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under §4110.3-1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.~~

~~(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.~~

~~(f)~~ (c) Notwithstanding the provisions of §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision, and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, ~~or~~ the Interior Board of Land Appeals, or an administrative law judge to ~~place~~ provide that the decisions in full force and effect becomes effective immediately as provided in §4.21(a)(1) of this title.

#### §4160.4 Appeals.

(a) Those who wish to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in §4.470 et seq. of this title. The appeal or petition for stay must be filed with the BLM office that issued the



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decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in §4160.3(a).

~~Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in §4.470 of this title. As stated in that part, the appeal must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in §4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals. (b) When OHA stays implementation of a decision described in paragraph (b)(1) or (b)(2) of this section, the immediately preceding authorization and any terms and conditions therein will not expire, and the permittee, lessee, or preference applicant may continue to graze under the immediately preceding grazing authorization, subject to any relevant provisions of the stay order and to §4130.3(b), and except as provided in paragraph (c) of this section. This paragraph applies to decisions that:~~

(1) Change the terms and conditions of a permit or lease during its current term; or

(2) Offer a permit or lease to a preference transferee with terms and conditions that are different from the permit or lease terms and conditions that are most recently applicable to the allotment or portion of the allotment in question; or

(3) Renew a permit or lease with changed terms and conditions.

(c) When OHA stays implementation of a decision described in paragraphs (c)(1) through (c)(4) of this section, the authorized officer, notwithstanding paragraph (b) of this section, will authorize grazing consistent with its final decision when the decision:

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(1) Modifies a permit or lease because of a decrease in public land acreage available for grazing (see §4110.4-2);

(2) Affects an application for grazing use of BLM-designated ephemeral or annual rangeland;

(3) Affects an application for additional forage temporarily available under §4110.3-1(a); or,

(4) Affects an application for a grazing permit or lease that is not made in conjunction with a preference transfer application (see §4110.2-3(d)).

## Subpart 4170 -- Penalties

### §4170.1 Civil penalties.

#### §4170.1-1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of §4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates §4140.1(b) of this title and has not made satisfactory settlement under §4150.3 of this title the authorized officer shall refer the matter to proper authorities for

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appropriate legal action by the United States against the violator.

(d) Any person found to have violated the provisions of §4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

#### §4170.1-2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of ~~permitted-active~~ use the permittee or lessee has failed to use.

#### §4170.2 Penal provisions.

##### §4170.2-1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under §4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than \$500.

##### §4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

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Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), any person who knowingly and willfully commits an act prohibited under §4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

## Subpart 4180 -- Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

### §4180.1 Fundamentals of rangeland health.

Where standards and guidelines have not been established under §4180.2(b), and the authorized officer determines that grazing management needs to be modified to assist in achieving the following conditions, the authorized officer will take appropriate action as soon as practicable but not later than the start of the grazing year that follows BLM's completion of relevant and applicable requirements of law and regulations, and the consultation requirements of §§ 4110.3-3 and 4130.3-3:

~~The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.~~

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there

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is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered ~~species~~, Federal pFederal Proposed, or candidate threatened and endangered species Category 1 and 2 Federal candidate and other at-risk and special status species.

#### §4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the

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Bureau of Land Management State Director must provide for conformance with the fundamentals of §4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c) ~~The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon~~ (1) If the authorized officer determines ~~in~~through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section-, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose and analyze appropriate action to address the failure to meet standards or to conform to the guidelines not later than 24 months after the determination. The requirements of this paragraph are met when the parties execute an applicable and relevant documented agreement or the authorized officer issues an applicable final decision under §4160.3.

(2) Upon executing the agreement or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action(s) as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraphs (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases

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and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

- (1) Watershed function;
- (2) Nutrient cycling and energy flow;
- (3) Water quality;

(4) Habitat for endangered, threatened, proposed, candidate ~~Candidate 1 or 2~~, or other at-risk or special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;



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(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;

(7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;

(8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal ~~P~~proposed, ~~Category 1 and 2~~ Federal candidate, and other at-risk or special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) Emphasizing native species in the support of ecological function; and

(12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(f) ~~In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and u~~Until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section will~~shall~~ apply and will be implemented in accordance with paragraph (c) of this section. ~~However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February~~



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~~12, 1997, fallback standards and guidelines implementation date, not to exceed the 6-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long term rangeland health and administrative efficiencies.~~

(1) Fallback standards.

(i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) Fallback guidelines.

(i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

(iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;

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(v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, ~~Proposed, candidate~~ Category 1 and 2 candidate, and other at-risk or special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

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(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

